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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/210,775 | 12/14/1998 | TOSHIAKI SHIMADA | 1163-0214P | 4920 |

7590 03/20/2003

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EXAMINER

WONG, ALLEN C

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2613

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DATE MAILED: 03/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/210,775

Applicant(s)

SHIMADA ET AL.

Examiner

Allen Wong

Art Unit

2613

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]


- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-14.
- Claim(s) withdrawn from consideration: _____.
8. ☒ The proposed drawing correction filed on 30 October 2001 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 9.
10. ☐ Other: _____



CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 5. does NOT place the application in condition for allowance because: all of the limitations of the claims have already been addressed in the previous Office Action, paper no.21. Again, on page 4 of applicant's response, applicant argues that the HOD is merely one tool used to determine a scene change and it is in direct contrast with the applicant's invention. The examiner respectfully disagrees. Lee teaches the use of measurement methods to determine relative distances between frames, where the HOD (Histogram of Difference) method is noted as one of the best because of its sensitivity to local motion, especially when there is no global motion between frames (col.19, lines 48-61 and col.21, line 53+). Lee's Figure 29 shows the plot of frames in a group of frames (GOP) with the local motion changes of the frames with respect to another. Lee teaches that the HOD method of determining local motion in between frames can be applied to a group of frames (GOP) so that bit control algorithms can be applied accordingly to adapt to the changing scene complexity between the frames in a GOP (col.20, line 39 to col.21, line 52). Also, Lee teaches that the target bit allocation for each picture type is varied accordingly to adapt to the changing scene complexity found within a sequence of moving pictures (ie. group of pictures) to be encoded (col.35, lines 20-22). In other words, Lee teaches a control scheme that takes the complexity found in the sequence of moving pictures, and adaptively allocates the proper amount of bits for encoding the sequence of moving pictures by changing to the proper quantization step size. Again, peruse the Office Action, paper no. 21 for further elaboration. Also, on pages 5-7 of applicant's response, the applicant asserts that the combination of Odaka in view of Lee is non-combinable. The examiner respectfully disagrees. As stated before in the previous Office Action, paper no. 21, the motivation is that it would have been obvious to one of ordinary skill in the art to take the teachings of Odaka and Lee as a whole for taking into account of the complexity of the sequence of moving pictures so as to accurately, effectively and efficiently encode the sequence of moving pictures while preserving high image quality and for keeping up with today highly complex encoding standards. Further, it is the examiner's contention that the teachings of Odaka and Lee are combinable because they are used in the same MPEG video encoding environment. Finally, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971)..